



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

March 3, 2003

Mr Oscar G. Treviño
Walsh, Anderson, Brown, Schulze & Aldridge
P.O. Box 2156
Austin, Texas 78768

OR2003-1332

Dear Mr Treviño:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 177300.

The Hitchcock Independent School District (the "district"), which you represent, received two requests for "original copies of all the school board meetings" including "official meetings on all regular, call, special and emergency meetings from 1998 to the present" and "original copies of all school board closed meetings, certified agendas and or original copies of all taped recordings of the above said meetings from 1998 to the present." You did not submit representative samples of certified agendas or closed session audio tape recordings. See Open Records Decision No. 495 (1988) (stating that the attorney general lacks the authority to review certified agendas or tapes of executive sessions to determine whether they may be withheld under the Public Information Act). You also claim that the requested information is excepted under sections 552.101, 552.103, and 552.107 of the Government Code. We have considered the exceptions you claim and reviewed the representative sample of open session audio tapes and open session board minutes submitted to this office.¹

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by statute. Section 551.104(c) of the Government Code provides that "[t]he certified agenda or tape of a closed meeting is available for public inspection and

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

copying *only under a court order* issued under Subsection (b)(3)." (emphasis added). Thus, such information cannot be released to a member of the public in response to an open records request. See Open Records Decision No. 495 (1988). Therefore, the district must withhold the responsive certified agendas or tapes of closed meetings pursuant to section 552.101 of the Government Code in conjunction with section 551.104(c) of the Government Code.

However, section 551.002 of the Government Code expressly provides that "[t]he minutes and tape recordings of an open meeting are public records and shall be available for public inspection and copying on request to the governmental body's chief administrative officer or the officer's designee." When a statute expressly makes information public and mandates the release of the information, that information cannot be withheld from disclosure under one of the exceptions in Subchapter C of chapter 552 of the Government Code. See Open Records Decision No. 451 (1986) (specific statute that affirmatively requires release of information at issue prevails over litigation exception of Public Information Act). Therefore, the district must release the responsive minutes and tapes of the open meetings to the requestor. Gov't Code § 551.002; see also Open Records Decision No. 221 (1979) (board minutes of school district cannot be excepted under section 3(a)(3) [statutory predecessor to section 552.103] under any imaginable circumstances). As section 552.101 is dispositive, we do not address your remaining arguments.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor

should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Heather Pendleton Ross
Assistant Attorney General
Open Records Division

HPR/sdk

Ref: ID# 177300

Enc: Submitted documents

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